

REFLECTIONS
ON THE
Impropriety and Inexpediency
OF
LAY-SUBSCRIPTION
TO THE
XXXIX ARTICLES,
IN THE
UNIVERSITY OF OXFORD.



OXFORD,

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REFLECTIONS, &c.

THOUGH the late Petition to Parliament hath been the Occasion of calling in Question, at this Time, the Propriety of our Academical Subscriptions to the Thirty-nine Articles, and of making them the Subject of general Debate and Animadversion; yet it is well known, that our Practice herein hath been long objected, as a Reproach to us, by our Enemies, and that our Friends have frequently confessed, they knew not what Apology to make for it. It may be proper therefore to consider this Subject, abstractedly from any Thing that hath lately been said or done in Parliament relating to it; and to examine whether it is not high Time to abrogate or alter this sort of Test, from our thorough Conviction of the Impropriety and Inexpediency of it. It will surely be more to our Honour, whatever we do, that we seem to have been influenced by the Rectitude of the Measure, than that we are drawn to it by Arguments merely prudential, or fright-

ened into it by the Apprehensions of a Storm
bursting over our Heads.

Now, if it shall appear that Subscription
to the Articles, as it is used amongst us, is
a Perversion of that Summary of Faith and
Doctrines from the Purpose for which it was
originally composed; and that it was intro-
duced here at very critical Times, when the
Nation was in a Panic, and the Minds of
Men were inflamed, and consequently the
Measure might not have due Consideration
paid to it; there will need but few Words
to convince us, that more proper Expedients
might be found out and adopted, for secu-
ring the Interests of the established Church
in the University.

The Articles of the Church of England
were first compiled by *Cranmer*, and others
of the Reformers, about the Year 1552, as
a Summary of Faith and Doctrines to which
the Clergy were obliged to subscribe, and by
which they were to be directed and restrain-
ed in their Instructions to the People. This
was the whole original Design and Purpose
of them. Thus they are described in the
Council-Book, (Oct. 2, 1552.) as " certain
" Articles exhibited to his Majesty, to be
" subscribed by all such as shall be admit-
" ted to be Preachers or Ministers in any
" Part

“ Part of the Realm *.” And the Archbishop, in his Letter to the Council, speaks of them in no other Light. “ I have sent
 “ the Boke of Articles, says he,----besech-
 “ ynge your Lordeshippes to be Means unto
 “ the Kyng’s Majestie, that all the Bishoppes
 “ may have Authority from hym to cause
 “ all their Prechers, Archdeacons, Deans,
 “ &c. with all their Clergie, to subscribe
 “ to the said Articles. And *then* I trust,
 “ that such a Concorde and Quyetness in
 “ Religion shall shortly follow thereof, as
 “ ells is not to be looked for many Year †.”
 Plainly intimating, that the whole Application of them, for the Peace and Security of the Church, was to be confined to, and would have its full Effect in, the Subscriptions of the Clergy. The Substance of the Preamble to the Statute 13 Eliz. 12, which gives the legal Authority to and enforces these Subscriptions, is contained in these few Words, which avow this to be the only Design of them, *That the Churches of the Queen’s Majesty’s Dominions may be served with Pastors of sound Religion.* Accordingly it is enjoined by the same Act, “ that he that is
 “ to be made a Minister, must produce a
 “ Testimonial of his honest Life, and of his

* See Strype’s Life of Cranmer, p. 273.

† Ibid. Append. No. 64.

“ professing

“ professing the Doctrine expressed in the
 “ *Articles*----and must be able to render to
 “ the Ordinary an Account of his Faith, in
 “ *Latin*, according to the said *Articles*.” In
 this View alone they have all along been
 considered by our civil and ecclesiastical
 Governors ; for we may venture to affirm,
 that they have never yet been applied, ei-
 ther by the Statute or Canon Law, but as
 a Test for the Teachers of Religion *.

Let us now see on what Occasion they
 came to be employed, in a more extensive
 Service, in the University.

The Subscription to the Thirty-nine Ar-
 ticles was first enjoined in the University,
 on the taking Degrees, in the Year 1573.
 The following is the Account which our
 Historian, WOOD, gives of this Introduc-
 tion. *Sub hæc tempora majori studio et ardore*
exigi capit ut Ecclesiæ Anglicanæ Liturgiam
integramque Disciplinam vere Christianam, des-
cripto etiam nomine suo, agnosceret quisquis mi-

* I am sensible there may be some little Room to cavil at
 this Assertion. It may be said, that Heads of Colleges, by Stat.
 13, 14 Car. II. c. 4. and all Judges in Ecclesiastical Courts, by
 Canon CXXVII. are obliged to subscribe the Thirty-nine Arti-
 cles, and yet may not be, and frequently are not, in holy Or-
 ders. But whoever considers the Office of the former, as Super-
 intendants over the Youth in Societies dedicated to the Service
 of Religion and Learning, and that of the latter, as Magistrates
 empowered to enforce the Laws, and support the Authority of
 the Church, will readily own that they may both, without any
 Impropriety, be ranked amongst the Teachers of Religion.

nisterio Ecclesiastico nomen daret. Siquidem eâ in re parcius huc usque sategerant Episcopi, et assensum quem dixi præfractius denegarant rebelles, quod Canones, in Convocatione Clericali ante decennium confecti, non ante annum novissimè elapsum auctoritate Parliamentariâ rati haberentur. Porro autem, hac tempestate Subscriptionem illam et Gradus capeffentibus imperabant Magistratus Academici, quam non sine turbis eade re motis detrectabant Togatorum haud pauci, uniformem precum publicarum injunctionem cavillati, Ritusque et Disciplinam suprema Regni protestate stabilitam auctoritate suâ, hoc est nullâ, concutere et immutare laborantes. These, we see, were very troublous Times. In truth, the Church was in a very fluctuating State, and the Reformation far from being settled. Our religious Uniformity was obstructed by the two great Factions of Papists and Puritans; and whilst some relaxed too much, perhaps out of Policy, in the Use of the proper Means for subduing them, it is clear, that the over-heated Zeal of others, carried them into Measures not well suited for that Purpose. Thus we find, in the Matter before us, that the Bishops had been negligent in requiring the Subscription of the Clergy, for the ten Years past; (for which, however, they had no bad Excuse to make, as the Canons enjoining them had not been confirmed

confirmed by Parliament;) but this Neglect of the Fathers of the Church was fully compensated by the Fathers of the University, who went a large Step farther than either Statute or Canon had required. They enforced these Subscriptions on the Candidates for Degrees: and thereby set the first Example of making them the Test of the Orthodoxy of the Laity as well as Clergy.

It doth not appear that this was done by a formal Academical Statute. The Words of the Historian, *imperabant Magistratus Academici*, seem rather to intimate that it was only an Injunction, or Ordinance, from the Magistrates of the University. And this seems the more probable, as the same Author informs us, that the Custom of subscribing had grown into Disuse in the Year 1590, and that *then* it was restored by Statute. *Statutum porro ne, quæ jam exoleverat, Articulis Fidei et Disciplinæ Ecclesiasticæ subscribendi Consuetudo, in posterum omitteretur* *. These Subscriptions, at taking Degrees, were again confirmed by Statute, at the Instance of James the First †, in the Year 1617; when the three Articles of the thirty-sixth Canon were first added to this Test.

This last was a Contrivance of *Laud's*,

* Hist. et Antiq. Oxon. p. 304. CIODXC.

† Ibid. p. 323. CIODCXVII.

in order to give a thorough Blow to the Puritans. We must now look back for the Origin of Subscription at Matriculations; and here we shall find that the Fear of Popery was still more fatal to us than that of Puritanism.

The Year 1581, when these were first introduced amongst us, afforded a Conjunction the most critical and hazardous to the Interests of the Protestant Religion in this Kingdom. Queen Elizabeth had carried her Dissimulation so far, with regard to her pretended Match with the Duke of Anjou, that she had actually signed the Articles of Marriage. "As soon as this was publicly known, says Rapin, all England was, on a sudden, overwhelmed with an Inundation of Popish Priests, Jesuits, and other Catholics, who expected to repose themselves in Safety, under the Protection of the Duke of Anjou." The Nation and Government immediately took the Alarm; and from this Crisis arose many of those severe Laws against Papists which were enacted in this Reign *. The Governors of the University were struck with the same Panic; and immediately, at the Instigation of their *pious* Chancellor the Earl of Leycester, (whose Name reflects very lit-

* See also Camden's Annals of Queen Eliz. sub Anno 1581.

the Honour on this Transaction) seized upon the Weapons that were next at Hand, to repel the Enemy. As the Thirty-nine Articles were held to be the most infallible Antidote against Popery, as well as against Puritanism, they concluded them to be equally proper for all Constitutions, for the Laity as well as Clergy, for the Babes and Sucklings of the University, as well as for those who were at full Growth in religious Knowledge. Thus they were prescribed to be taken not only by the Candidates for every Degree, but by Boys of Twelve Years old at their Matriculation.

Nothing can be more manifest than the Absurdity and Impropriety of this whole Conduct. It was absurd, in the highest Degree, to compel the uninstructed Youth of the University, immediately upon their first Admission, to give their Assent to abstruse theological Doctrines, with the Proofs of which they could not be supposed to have the least Acquaintance. I say, *to give their Assent*, for according to our best Writers, this hath been always the Meaning of Subscription to these Articles. "The Subscription to them, says Bishop Burnet, imports an Assent to them, and not only an acquiescing in them." The very Compilers of them could not, and did not, give
any

any stronger Testimony of their Assent to them; and Cranmer desired nothing more from his Clergy, *ad tollendam opinionum dissensionem, et consensum in vera Religione firmandum*. It may be said, and indeed it hath been said, that this Subscription means no more than that the Subscriber declares himself to be a Member of the Church of England. But, by what Authority is this said? The University, which enjoins the Subscription, gives no Authority for saying so. And, if she did, the Charge of Absurdity would still remain; for is there any Shadow of common Sense in making the Subscriber set his Name to a Collection of Faith and Doctrine, which, it is owned, he doth not understand, in order to draw from him nothing more than what is contained in this plain and very intelligible Assertion, *I A. B. do declare myself a Member of the Church of England?* And will it not increase the Ridicule of our Enemies against us, when it shall be told to the World that the first Test required by the University, of our being Members of the Church of England, is a total Resignation of our Senses, and the Right of private Judgment, by subscribing what we know nothing of? For my own Part, I cannot help thinking that the young Gentleman is very scurvily used

in this Tranfaction, and that our Behaviour to him is full as difingenuous, as it would be to perfuade an honeft fimple Countryman to fet his Hand to a Bond or Counterpart of a Leafe, which he had never read, loaded with Conditions or Covenants to which he was an utter Stranger.

If we were to allow, that Subscription to the Articles is only an *Acquiefcence* in the Truth of them, (for this feems, in the Cafe before us, to be very eagerly infifted on by more than one Writer *) this will not at all mend the Matter. Acquiefcence is by no means compatible with Ignorance, or Want of Inftitution, on any Subject. The Man who acquiefceth in the Truth of a Propofition, is fupposed to be as good a Judge of it, and to have examined it as critically as another, who thoroughly affents to it, or a third, who openly oppofes it. And therefore he can no more acquiefce in what he knows nothing of, than he can affent to, or difsent from, it. In fhort, Acquiefcence is that State of Mind in which we determine, for the fake of Peace, or from other prudential Motives, in Things indifferent or of fmall Importance, not to oppofe the Opinions or Doctrines of others, though we cannot cordially give our Affent

* See Collection of Papers, &c. p. 7, 11, 17, &c.

to them. The Subscription, therefore, of the Boy-Subscriber, is, in every View, a mere Nullity; or, as we have said before, an absolute Absurdity.

For these, and other Reasons, this Doctrine of Acquiescence has been found utterly untenable. It has been very well observed upon it—"that it is a *novel* Interpretation of a Test, which has been complied with almost for the Space of two hundred Years, and which has not ever been explained in this Manner by the Magistrate, before whom Subscription is made; nor is any Proof offered of its having been the general Sense of the University, at any Period, since the Establishment of the Test *."

This last Writer, therefore, proposes to supersede it with a new Device, which he supposeth will be more effectual; but which, in my Opinion, will not advance us one Step towards a proper and rational Apology. He is very conscious that the subscribing Person must be supposed to give an Assent, and, in order to furnish him with one, he introduces the Distinction of an Assent of Faith and an Assent of Knowledge. The former of these, he thinks, will suit very well the Case of the young

* Plain and obvious Meaning of the received Test, &c.

Man at Matriculation. He is still supposed to know nothing of the Contents of the Articles; but his Assent to the Truth of them is founded upon the Testimony of Persons, (his Tutor, for Instance, or perhaps the Beadle of Arts, who tenders him the Book,) in whom he reposes the most intire Confidence. The Subject of the Test, we here see, is intirely changed, from the Truth of the Articles to the Veracity of the Tutor; and the Pupil, by subscribing, only professes that he thoroughly believes him to be a very honest Man. There is nothing obtained by this, as a Test of the young Man's Principles, or a Security for his Conformity to the established Church.

I will try, however, whether something may not be made of this Scheme, of calling in the Assistance of the Tutor. As all the Knowledge and Understanding of the Matter subscribed to is supposed to reside with him, the *Onus* of subscribing should by no means be thrown upon the Pupil: And this Impropriety, I think, may be easily rectified in the following Manner.

It is known very well that, at taking the Degree of Batchelor of Arts, the Dean takes the Candidate aside and demands his Opinion on some Logical Question; which, as there is no Time to discuss at that Season,

son,

son, and as the young Gentleman may not be sufficiently instructed in the Subject of it, he is taught to refer to his Logical Sponsor, or Aristotle, to Answer for him at the next Lent, by repeating these Words, *Respondebit pro me meus Aristoteles in proxima Quadragesima.* In like Manner it may be contrived at Matriculation, that the Person called upon very formally, we will suppose by the Vice Chancellor, to give an Account of his Faith, may get rid of all Embarrassment by being taught to repeat these five Words, *Respondebit pro me Tutor meus.*

Indeed all these Expedients are mere trifling, and trifling on a Subject too serious to be trifled with. After twisting and turning from one Refinement to another to get rid of this Absurdity, the Truth will still remain irrefragable; viz. *That Subscription must mean an Assent of Knowledge, obtained by a serious and candid Examination of the Truth of the Propositions subscribed to.*

But, in the next Place, the Conduct of our Governors, in this respect, was extremely improper, as it imposed the same Test on the Lay-Conformist, which had been originally devised as a Security against Diversity of Opinion in the Ministers and Teachers of Religion. The Articles of the Church of England are distinguished by
Divines,

Divines * into Articles of Faith and Articles of Doctrine. To the former alone, which are few in Number and relate to the Fundamentals of Christianity, the Laity are supposed to give their entire Assent, as they are contained in the Office of Baptism, in the Catechism, and are to be found occasionally in the Liturgy. These, therefore, are sufficient to entitle them to Lay-Communion, and without an Assent to them, they cannot with any Propriety be said to be Members of the Church of England. But, to the Articles of Doctrine, they are required to submit only by Silence and Non-opposition, or, what may be *here* properly called, Acquiescence. This tolerating Temper hath always distinguished our Church from that of Rome, in which every Dogma, which hath received a Sanction from her Popes and Councils, is imposed upon her Laity, as well as Clergy, as necessary to Salvation. Can we reflect, without some Regret, that the University is the only Place in which this Distinction between the two Churches is, in a great Measure, destroyed; and the tolerating Disposition of our own broken in upon and violated?

• If the Academical Lay-Subscriptions are

* See Burnet. p. 6.

to be viewed in the Light I have here placed them, it will be allowed by every candid Member of the University, that, without Respect to the particular Circumstances of the present Times, it were to be wished, that the Statutes enjoining them might be immediately repealed and abrogated. And that this might be done with Honour to ourselves, and with Safety to the Interests of the Church, a very little Reflection will convince us.

The University, it will be allowed on all Hands, is by its Institutions a Seminary of religious and learned Education for the Service of the Establishment in Church and State. On this Account the Legislature hath vouchsafed to fortify our academical Constitution with extraordinary Powers and Immunities. Princes have even been profuse in granting their Charters of Privileges to us, and those Charters have been confirmed by Act of Parliament, and made Part of the Law of the Land. In Gratitude for these great Obligations, as well as in pursuance of the general Purpose of our Establishment, it would be proper, on all Occasions of this Sort, to look towards the Constitution of our Church at large, and consider the Wisdom of the Legislature in providing for the Security of it, as the

Model of our Conduct, as far, at least, as this can be done, consistently with the Support of our Discipline.

To apply this : We have seen that the Government supposes the Church to be in full Security, as to her Faith and Doctrines, by the Subscriptions of the Ministers and Teachers of Religion to the Thirty-nine Articles ; and by the peaceable Acquiescence of the Laity, who are in Communion with her. If the Church of England be the same Thing in the University that it is in the rest of his Majesty's Dominions, why should not the same Polity take Place amongst us ? On this Foot, no other Test seems necessary to be required of our Laity, but their regular Attendance at the Prayers and Administration of the Sacrament, according to the Usage of the Church of England, in the Chapels of their respective Colleges and Halls : And this, it is to be supposed, the good Discipline of these Houses will always exact from them. It may be proper likewise, that every young Person, at his Matriculation, should make and subscribe a Declaration, purporting his *steady Resolution to conform to the established Worship, by his constant Attendance thereon, during his Stay in the University.*

I am well aware that it may be here objected,

jected, that such Declaration would fall short of the Security required. It will be said, that the Person matriculated ought to profess himself a Member of the Church of England; and that his not doing so will open a door for occasional conformity, and the Admission of the Sons of Dissenters amongst us. If this should be the Consequence, I will fairly own that I should think it highly honourable to the University; nor do I see how it could be attended with the least Degree of Danger to the Church and Commonwealth. It would give no Room for the Entrance of the old, rigid, Presbyterian Leaven. The Dissenter who sends his Son to the University, where he knows it will be required of him that he should regularly conform to the Liturgy, is himself, already, more than half a Convert to the Establishment; or, at least, intends that the young Man should be wholly so. And surely *Alma Mater* should not lose so fair an Opportunity of extending her Arms to receive and conduct him into the Church.

It may be observed farther, that we are sometimes honoured with the Residence of the Sons of foreign Protestants, who come hither for their Education; of which there are, at this Time, some Instances in the

University. Now there would not be much Propriety in requiring these Gentlemen, immediately upon their arrival here, and perhaps within a few Days after their coming into the Kingdom, to profess themselves to be Members of the Church of England. There is surely more Decency in barely requiring their Attendance on the public Worship, in which if they meet with any Thing disagreeable to their Consciences, they may easily be relieved, by relinquishing their Academical Privileges, and shortening their Stay amongst us.

If there be any Room for an Exception to this general Regulation of excusing all our Lay Members from Subscription to the Thirty-nine Articles, it is in the Case of Tutors, when they happen not to be in holy Orders. These Gentlemen may undoubtedly be ranked amongst the Teachers of Religion. They are strictly enjoined by the Statutes of the University *, to superintend the religious and moral Instruction of their Pupils, according to the Doctrines contained in the Articles. They may therefore

* Tit. III. Sec. 2. Tutor vero Scholares tutelæ et regimini suo commissos probis moribus imbuat, et in probatis authoribus instituat; et maxime in Rudimentis Religionis et Doctrinæ Articulis in Synodo Lond. (anno 1562) editis: ac pro virili suo, disciplinæ in Ecclesia Anglicana publicè receptæ eos conformes præstabit.

fore properly enough be called upon to subscribe their Assent to them, or to declare that they will instruct their Pupils, *pro virili suo*, in the Doctrines contained in them.

It hath been generally observed, during this Debate, that there is no great Difficulty in convincing Men of the Impropriety at least of the Subscription at Matriculations; for those flimsy Schemes of substituting Acquiescence for Assent; an Assent of Faith for an Assent of Knowledge; and providing the young Man with a Godfather, in the Person of his Tutor, or some other honest and good Man, are, I believe, very commonly, as well as deservedly ridiculed. But it is not so easy to persuade them of the Inexpediency of annexing these Subscriptions as a necessary Qualification for the taking Degrees. I have often thought that it is our Fault in this Place, to see every Thing in too *Clerical* a Light. Thus we are apt to forget that the great Body of the University is a mere Lay-Corporation, and are apt to fancy that all our Privileges and Immunities were granted for the sole Use and Behoof of the Clergy: And thus we suppose that Academical Degrees, because the Clergy deal most in them, have a necessary Connection with the Church and Religion.

Religion. But, in fact, this is not so. The Man who takes the Degree of Batchelor or Master of Arts, makes no Approach to, or Connection with, the Church by that Act. He is still a Layman to all Intents and Purposes, and frequently continues so for his whole Life after. He migrates, perhaps, to the Temple, and pursues the Law ; or to his Estate in a distant County, and pursues the Game ; or he may pursue still farther his Academical Honours, by taking the Degree of Batchelor and afterwards that of Doctor of Physic. What is there in any of these Pursuits, which hath any Thing to do with the Doctrines contained in the Thirty-nine Articles ? I think it will not be proved that the Gentlemen of the Faculty are ever the better qualified to prescribe to their Patients, for having undergone this Test of their religious Principles. However, if it be still insisted on that it may be of some Service to them in their Practice, I shall beg Leave to tell the following Story ; which, though ludicrous enough, contains as serious an Answer as the Nature of the Debate deserves.

An old Royalist, who had lain some Years a Prisoner in the Tower, took the Courage to apply to Cromwell, to whom he had been personally known, for a Release from Confinement.

finement. He pleaded much the Badness of his Health, and that it was the Opinion of his Physicians that nothing but free Air and Exercise would cure him of an inveterate scorbutic Disorder. The Protector, who could sometimes do a good-natured Thing, ordered him to be set at Liberty. *But*, said the Officer who brought the Petition, *your Highness will first make him take the Engagement.* No, replied Cromwell, (who knew the Stauchness of the Prisoner's Loyalty would never submit to this Prescription) *release him immediately. Dost think that taking the Engagement will cure the Man of his Scurvy?*

For my Part, I should think it as easy to cure one Man of the Scurvy, by giving him the Engagement, as to qualify another to prescribe a better Remedy, by demanding his Assent to the Thirty-nine Articles.

It hath been sometimes said, that it would be proper to retain this Subscription on the Admissions of Doctors and Masters to their power of voting, as Members of Convocation. But, upon the Plan we have here followed, there can be no more Reason for doing so, than for its being made use of on taking Degrees. A Member of the Oxford Convocation, as such, hath no clerical Character, any more than a Member of the Chamber

Chamber in the Corporation of the City of Oxford, or a Common-council-man of London ; and I never heard that the Thirty-nine Articles were enjoined to be subscribed by the Corporation-Test Laws. Let us adhere, as much as our Discipline will permit, to the System marked out to us by the Constitution, and every Thing we do will be consistent and uniform.

Having examined the few Attempts that have been made to apologize for this Subscription, and seen the Insufficiency of them, I shall now proceed to examine the Force and Validity of *some Positions which*, it is said, *strongly oppose any projected Alteration.*

These I find drawn up in Form, in a Paper entitled, A RECAPITULATION, at the End of the *Collection of Papers, designed to explain and vindicate the present Mode of Subscription.*

1. " The University (it is said) has a " *prescriptive Right* to the present Mode of " Subscription, having exercised it for near " two hundred Years." If the Mode of Subscription is absurd and improper, it is hoped the University will not plead *Prescription* in order to support it. Indeed this Argument proves too much. It militates against all Reformation and Improvement, whether in Church or State. Popery must have

have stood its Ground, and the exorbitant Prerogative of our Kings been unreduced to this Day, if a *Prescriptive Right* for two hundred Years could have supported them.

2. "It cannot be presumed that so learned
 " a Body would have instituted and conti-
 " nued a Practice, unwarrantable, arbitrary,
 " and absurd." How the University came
 to institute this Mode, hath been suffi-
 ciently explained. At one Time they were
 frightened into it by the Apprehensions
 of Popery, at another by Puritanism; they
 were cajoled by a wicked and politic Minis-
 ter, who had not the least Regard for the
 Church or Religion; or driven by a Mo-
 narch, who had a high Sense of his Prero-
 gative, and, from his *great Learning*,
 thought himself peculiarly qualified to exert
 it in Academical matters. The Practice,
 when once introduced, was very easily con-
 tinued. We look with great Veneration on
 all our Institutions in this Place, and the
 little that can be said for many of them, is
 handed down, with great Diligence, from
 Tutor to Tutor *, who, with great Gravity,

* This we find has been the Case with the foregoing expla-
 natory Doctrine of *Acquiescence*. *It is not my own*, says one of
 the Abettors of it, *I received it from my Tutor, and always com-*
municated it to my Pupils. Collection of Papers, p. 10.

retale it to their respective Pupils. In short, *Bodies of Men* are with great Difficulty brought to a Reformation of any Errors in their political Institutions. To such Re-formations, indeed, nothing is generally necessary but plain Reason and common Sense; but in the cool Exercise of these, it frequently happens that *learned Bodies* are, of all others, the most defective.

3. " There have been no evil Suspensions, " no Uneasiness in this Place, arising from " the Continuance of the Practice." It is true; the Continuance of the Practice has made us callous and unfeeling. We have slept in Security during the Outcries of the World against us; and even now there are not wanting some who would lull us back into our Slumbers, and render us deaf to the friendly Intimations, of those who really wish well to us, to exert ourselves and get rid of this Reproach.

4. " It has been generally looked upon " as a proper Method to secure the In- " terests of the Church of England." The Interests of the Church are sufficiently secure by the Attendance of the Lay Conformist on her Public Worship, and his *unsubscribed Acquiescence* in her Doctrines.
She

She can obtain no higher Security by making those subscribe her Articles, who know nothing of them.

5. " The Alteration of the Practice might
 " seem to carry in it a Reflection upon the
 " Wisdom and Piety of our Predecessors for
 " having established it, and an Acknow-
 " ledgement of the Want of them in our-
 " selves, for having *continued* it." The Wis-
 dom and Piety of our Predecessors must be
 judged of by their Conduct. What that
 was, in the Instance before us, whether
 wise or pious, or both, or neither, may be
 guessed at by what hath been already said
 upon it; and from thence we may take an
 Estimate of our own Merits in the Con-
 tinuance of this Practice. Their Case and
 ours, however, are very different. If they
 neither acted wisely nor piously, their Re-
 putation is lost irretrievably; whereas ours
 may be recovered by a speedy Repentance.
 It will not surely be expected that we should
 continue in our Errors, in order to give a
 Countenance to theirs. After all we could
 do for them, it would be impossible to
 manage the Characters of their Patrons,
 upon whom the chief Blame of this Insti-
 tution must fall: For by what Art and
 Contrivance could we give the Attribute of

Wisdom to James the first, or Piety to the Earl of Leycester?

6. "What more have we to do to prevent Mistake and to silence Clamour, but to insert a proper Explanation of the Meaning of the Subscription in the Book, wherein the young Men write their Names, and read it to them at their Matriculation?" But, why will you leave this Blunder in your Statutes, in order to make an Apology for it? Would not the Operation be much more simple and direct, and full as effectual, if you took the thirty-nine Articles out of the *Book, wherein the young Men write their Names*, and inserted, instead of them, a Declaration of their Conformity to the Public Worship, to be read by them at their Matriculation?

7. "There is a great Difference betwixt altering Statutes that relate to our own internal Regimen, and Statutes by which we are connected with the Constitution in Church and State." Here I perfectly agree with the Recapitulator; and on this way of thinking I have founded my whole Argument in Favour of a Repeal of Lay-subscription in the University. This Connection is the highest Honour we can boast of,

of, and it will be our highest Interest to preserve it. In order to do so, the most natural and easy Method is, as I have hinted before, to adhere religiously to the Plan of the Constitution, in all those Statutes which in any wise relate to this Connection ; and, wherever we have deviated from it, to reduce our Institutions as nearly as possible to that Standard. On the other Hand, an Absurdity in a Statute relating to our internal Regimen may, in Comparison, be but of little Moment. It may, indeed, afford some Room for Ridicule ; in which, however, we may join the Laughers, and tell them that it is not worth our while to spoil their Mirth, by taking the Trouble to alter it.

In Conclusion of my Remarks on this Subject, I cannot but observe, that our Writers on the Side of Subscription have confined themselves entirely to that at Matriculation. They have not hitherto been capable of comprehending, for want of a proper System to conduct them (which, I hope, I have here furnished them with) that the Subscription at taking Degrees is as unconstitutional, as that at Matriculation is absurd and indefensible.

The

The Power of the University in abrogating and altering Statutes being again called in Question on this Occasion, it may not be improper to insert here an Abstract of those Arguments on which our Right to that Power seems to be founded. They are taken from Papers drawn up in the Year 1759, when this Matter was very warmly agitated. To these I shall add the Queries proposed to Counsel, (on a very full State of the Case, too long to be here inserted) with the Answer.

Oxford,
22d April, 1772.

CONSIDERATIONS

ON THE

POWER of the UNIVERSITY

*To make, alter, or repeal STATUTES,
without any ROYAL LICENCE.*

1. **T**HE great corporate Body of the University, (which is a Thing entirely distinct from our private, eleemosynary, collegiate Foundations) has the same Rights and Powers, and is subject to the same Regulations as other Bodies politic are.

2. All Corporations have an inherent and inseparable Right (included by Law in the very Act of incorporating) to make Bye-laws or Statutes for their own domestic Government: Provided such Bye-laws are not contrary to the Charter of Incorporation, or the general Law of the Land.

3. The University being a Corporation by Prescription, Time out of Mind, has no Charter of Incorporation to restrain it; but its several Charters of Liberties (down to that of 1 Ap. 14 Hen. VIII. inclusive) being confirmed by Act of Parliament 13 Eliz. are thereby become a Part of the Law of the Land. A Statute therefore, or Bye-law,
made

made contrary to these Charters, or to the general Rules of Law, will not be valid or binding: But such as is consistent with both will be good.

4. With respect to any Prohibitions contained in former Statutes; it is certain that no Corporation has Power to make a Statute or Bye-law, abridging the legislative Power of their Successors, who have the same Right to *repeal*, as the Predecessors had to enact; any more than one Parliament in Being can make an effectual Act to abridge the Power of a future Parliament. Therefore any academical Statute or Bye-law, which seems to assume such a Power, is either void in itself, or at least voidable and subject to Repeal by any subsequent academical Legislature. *Et cum Lex abrogatur, illud ipsum abrogatur, quo non eam abrogari oporteat.* Cic. ad Attic. iii. 23.

5. The Consequence of these Positions, pursued to their full Extent, is clearly this; that such a Prohibition as is contained in Tit. x. Sect. 2. §. 2. against repealing former Statutes, or explaining them without Licence from the Crown, is contrary to the first Principles of Law and Reason, and therefore void: Or, at least is itself liable
to

to be repealed in general, or suspended in any particular Instance.

6. If it be contended that the Royal Confirmation, 3 Jun. 1636, made the whole Body of Statutes from that Time unalterable ; let it be considered, that this Confirmation was superadded at the Request of the Chancellor only, (see the Letters Patent) two Years after the Publication of the Statutes, of which the Prohibitory Clause is Part ; and therefore could never be referred to by the Makers of that Clause. And if Successors cannot be precluded from their Right of Legislation by any Act or Consent of their Predecessors, nor by any other Means, unless by the Authority of Parliament, (which every Lawyer will allow) much less can they be precluded by the mere voluntary supervenient Act of the Crown, without the Concurrence of the Body.

7. If the *whole Body* of Statutes became unalterable by such Confirmation of the Crown, the Provisions for making new Statutes, and explaining old ones, (Tit. x. Sect. 2. § 2 & 3.) are totally nugatory and useless: They are made void at the same Time, and by the very same Charter, which professes to confirm them.

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8. That

8. That the University, at that Time, considered the Statutes in this Light, as revocable by future Successions, will appear from the following Extract of the Letters of Convocation, when they presented their Statutes to the King, 27 Sept. 1634; wherein they express a Hope, that in Consequence of his royal Patronage, their Successors would be cautious in altering; but by no Means suggest that they would not be empowered to alter. “Hujus Operæ non huic
 “ tantum sed et futuris sæculis impensæ,
 “ non aliud apud posteros expectandum est
 “ Præmium, quam ut ipsi vicem nobis re-
 “ pendant, et Corpus hoc Statutorum affi-
 “ due interpolando tandem in novum plane
 “ Corpus transforment. Has siquidem Le-
 “ ges haud aliud manet fatum, quam quo
 “ olim usas novimus Lycurgi Rhetras Axo-
 “ nasque Solonis; quas, nisi nomina ipsa-
 “ rum superefflent, fuisse aliquando hodie
 “ quis sciret? Ergo ut major hisce legibus
 “ apud posteros constet Reverentia, utque
 “ clementius seu scalpro seu spongia deletili
 “ in posterum petantur, in sinum sacratis-
 “ simæ Majestatis tuæ confugiunt, atque
 “ intra Augustale tuum recipi, id est sacrari,
 “ gestiunt. Pudebit scilicet Posteros ab Ar-
 “ chetypo morum et disciplinæ suæ penes
 “ te deposito *longe* recedere seu desciscere.”

9. Accord-

9. Accordingly we find that the University (since this Confirmation by King Charles, and while it was yet fresh in Remembrance) has made no Scruple from Time to Time to enact many new Statutes and Explanations, without any Licence from the Crown. As, in the first Place, the Statutes of the Arabic Lecture, founded by Archbishop Laud himself, and passed in Convocation, 2 Jul. 1640, whereby a fresh Attendance, enforced by a pecuniary Mulct, is laid upon all Batchelors of Arts and Students in Medicine.---The Statute of Declamations, which alters the Conditions upon which a Master's Degree was attainable, and which passed the Heads of Houses, 21 Jun. 1662, when Dr. Baylie was again Vice Chancellor, who had been President of St. John's some Years before the Statutes were compiled, and had been Vice Chancellor the first Time 22 July 1636, within a Month after the King's Confirmation.---And the Statute for transferring the Act Exercises, and other Solemnities, from St. Mary's to the Theatre, which passed 27 May 1699, under the Auspices of Archbishop Sheldon, who himself had been Warden of All Souls at the Time of the King's Confirmation. All these, and many others of a latter Date, were, pro tanto, Alterations of our former

Statutes; and yet such Alterations were not thought to stand in Need of any royal Licence.

Q U E R I E S.

Qu. 1. Has the University Power of making Statutes, or Bye-laws, (not contrary to the Law of the Land or it's own particular Charters confirmed by Act of Parliament) without obtaining a Royal Licence, where the Subject Matter of such Statutes is entirely new, and imports no Infringement on former Statutes?

Qu. 2. Has the University Power of making such Statutes, without obtaining such Licence, where the Subject Matter of them imports an Alteration or Explanation of any former Statutes, which were not specially confirmed by Royal Authority before the Compilation of the present Body, but which are now included in the subsequent general Confirmation of 3 *Jun.* 1636?

Qu. 3. Has the University Power of making such Statutes without obtaining such Licence, where the Subject Matter of them imports an Alteration or Explanation of such former Statutes as were specially confirmed by Royal Authority before the Compilation of the present Body of Statutes?

Or

Or has the Act of the Predecessors (confirmed by the King's Charter) abridged in these Points, or in any of them, the legislative power of the Successors?

A N S W E R.

1st *Qu.* We are of Opinion, that the University as a Body Corporate by Prescription, and confirmed by Charter, has a Power of making Bye-laws or Statutes for their good Government; such Power being inherent in their Constitution, and included in the original Act of Incorporation. And in this Case we think such Power may be exercised, without obtaining a Royal Licence, where the Subject Matter doth not infringe upon or any Way affect any former Statute.

2d *Qu.* We likewise are of Opinion, that the University has, by the same inherent Power, as a Body Corporate, a Power of making Statutes where the Subject Matter of them imports an Explanation or Alteration of former Statutes, which were not specially confirmed by Royal Authority, before the Compilation of the present Body of Statutes; but which are now included in the subsequent general Confirmation of the 3d *June* 1636; for the Reasons offered in our Answer to the next Question.

3d *Qu.*

3d Q^y. We are also of Opinion, that the University has the Power of making such Statues, without obtaining a Royal Licence, where the Subject Matter of them imports an Explanation or Alteration of such former Statutes as were specially confirmed by Royal Authority, before the Compilation of the present Body of Statutes. For, first, we think that the King has no Power vested in him by his Prerogative, or otherwise, to give Laws or Statutes to the University after it's original Act of Incorporation, without their Acceptance, Assent, or Confirmation. And we also think, That it was not in the Power of the University to delegate their Right of making perfect Bye-Laws or Statutes to any Subject, or even to the King: And that no Statutes, made by such Delegation, would be valid without the Assent or Confirmation of the Convocation. It is that which we think gives *Vitam et Modum* to every Statute. And as it was not in the Power of the University itself to enact any Statutes which should remain unalterable or unrepealable, so we think it could not delegate a power to any Subject or to the Crown, to enact or make any Laws that should not be repealable without the Consent of such Subject or his Heirs, or such King or his Successors.

Successors. And though Powers have in some Instances been actually delegated by the Univerfity to the Crown, to give them Statutes for their Government, and the Crown has accordingly fo done, and fuch Statutes have been confirmed by Royal Authority, yet even fuch Statutes fo made and fo confirmed cannot (we think) abrogate the legislative Power neceffarily inherent in, and incident to the Univerfity. And we obferve, that in all the Instances laid before us of Statutes recommended or given by the Crown, or the Chancellors of the Univerfity, to the Body, that Affent and Confirmation of Convocation (which we take to be the legislative Power of the Univerfity) has been uniformly required and obtained, before any fuch Statutes have been received as complete, effective, and perfect Laws.

June 2, 1759.

JOHN MORTON,
R. WILBRAHAM.

F I N I S.

Successors. And though Powers have in some Instances been actually delegated by the University to the Crown, to give them Statutes for their Government, and the Crown has accordingly to some, and such Statutes have been confirmed by Royal Authority, yet even such Statutes to make and to confirm cannot (we think) abrogate the legislative Power necessarily inherent in, and incident to the University. And we observe, that in all the Instances held before us of Statutes recommended or given by the Crown, or the Chancellor of the University, to the Body, that Affairs and Communion of Convocation (which we take to be the legislative Power of the University) has been uniformly required and obtained, before any such Statutes have been received as complete, effectual, and binding Laws.

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John J. Norton.
J. W. WILKINSON.

John J. Norton.

F I W I S

